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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE: PG&E CORPORATION and)
PACIFIC GAS AND ELECTRIC)
COMPANY,)
)
Debtors.) NO. 19-05257 JD
)
)
_____)

San Francisco, California
Monday, October 21, 2019

TRANSCRIPT OF PROCEEDINGS

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1 Monday - October 21, 2019

2:00 p.m.

2 P R O C E E D I N G S

3 ---o0o---

4 **THE CLERK:** Please be seated. Calling Civil 19-5257,
5 In Re: PG&E Corporation, and Pacific Gas and Electric Company.

6 Counsel, state your appearances for the record. Please
7 come forward and state your appearances for the record.

8 **MR. JULIAN:** Good afternoon, Your Honor, Robert Julian
9 and Kimberly Morris of Baker Hostetler on behalf of the Tort
10 Committee.

11 **THE COURT:** Good afternoon.

12 **MR. McCALLEN:** Benjamin McCallen, Willkie, Farr &
13 Gallagher, on behalf of the Ad Hoc Subrogation Group.

14 **MR. SINGLETON:** Good afternoon, Your Honor, Gerald
15 Singleton from the Singleton Law Firm, on behalf of the SLF
16 Fire victim claimants.

17 **MR. ORSINI:** Good afternoon, Your Honor, Kevin Orsini,
18 Cravath, Swaine & Moore, on behalf of the debtor, along with
19 Paul Zumbro from Cravath, Swaine & Moore, also.

20 **THE COURT:** Okay. Anyone else? All right.

21 Mr. Julian, Mr. Orsini, what's happening?

22 **MR. JULIAN:** Your Honor, we have met and conferred
23 several times and I would like to give you a report.

24 Mr Orsini, I think, has some similar views.

25 First of all, on working on a discount, we have exchanged

1 different proposals. I think we are apart right now. We have
2 agreed to continue discussing them. We may end up getting to
3 the point where we brief them.

4 If I may tell you some of our thoughts --

5 **THE COURT:** Of course.

6 **MR. JULIAN:** -- what we're looking at.

7 **THE COURT:** Yeah.

8 **MR. JULIAN:** The committee believes that we should be
9 looking at discounts with respect to three different
10 classifications of damages because the discounts are handled
11 differently for each of them.

12 First of all, for economic damages, where there is an
13 inverse claim -- which from our perspective is a pretty simple
14 claim to establish -- if Judge Montali in the inverse briefing
15 establishes that the California Appellate Court decision should
16 be applied in the Federal Court, we believe that we would
17 simply look at the Butte litigation and settlements to
18 establish whether the parties established discounts there. And
19 we're going to -- we would propose to give evidence that shows
20 that, with similar defenses to what PG&E is asserting here, the
21 Court in Butte, in a similar circumstance -- which is disputed,
22 whether it's similar -- found that inverse applies on summary
23 judgment.

24 **THE COURT:** So would it be the case that you would do
25 that by taking settlement demands, versus actual compromise

1 amounts?

2 **MR. JULIAN:** So let me address that.

3 So when discussing discounts on inverse economic damages
4 only -- let me address a couple of things.

5 First, both sides of experts are going to be, essentially,
6 building the economic damages from the ground up, looking at
7 individual homes, the numbers of homes, square-foot rebuild
8 cost, forestation, reforestation efforts, erosion control
9 efforts, business losses, and the like.

10 It's our view that if you look at the settlement figures
11 in Butte you have to look at the settlement demands and look at
12 the discounts rather than looking at what our experts come in,
13 in a neutral way, and explain what the numbers are. Their
14 numbers are vastly different from what plaintiffs' lawyers
15 would be coming in addressing.

16 So what we're saying there is: I need to get the final
17 set of documents on Butte settlements, which they are giving
18 us. We don't have all the settlements demands or maybe they
19 came in today and I'm not aware of them, but I believe they are
20 coming in closely on the tail of today's hearing.

21 So after our review of the settlement documents and the
22 Court proceedings determining that inverse should apply in
23 cases like this, we would be in a position to discuss a
24 discount approach with PG&E.

25 **THE COURT:** Okay. But -- that's sounds fine, but the

1 way you would do that, if it's not, tell me. Or, if you don't
2 want to tell me now, that's fine. But you would do that by
3 comparing what was demanded and what was actually paid?

4 **MR. JULIAN:** That's one way to do it. Another way to
5 do it is to look at the inverse ruling, which said that it's
6 essentially -- in all these cases where they admit they caused
7 the fire -- I'll except the Redwood case here -- it's virtually
8 no discount or a minor discount.

9 **THE COURT:** That's fine.

10 **MR. JULIAN:** So we're looking at both --

11 **THE COURT:** I mean, so the way I would envision this
12 is there would be demands. That's the hundred percent. There
13 will be checks that respond to the demand and the checks could
14 range from 0 to 100 percent. And you will average those and,
15 maybe, at least, by category, houses of this size, you know,
16 outer structures of this type, you could have rough guidelines
17 and typically, you know, the average difference is either 0 or
18 10 or 20 percent, or whatever you come up with.

19 **MR. JULIAN:** Yes. Where we're not yet communicating I
20 think is that that's a settlement-only approach looking at
21 demands versus payments.

22 **THE COURT:** No, I understand --

23 **MR. JULIAN:** Our experts are building it from the
24 ground up. Their numbers are going to be different from what
25 the plaintiffs' lawyers would come in. So we're looking at

1 both ways for economic damages.

2 **THE COURT:** There are multiple information streams. I
3 get that. But I think the ones where the claims were actually
4 compromised would be really very useful to see.

5 **MR. JULIAN:** We plan to focus on those.

6 The second type of damages, which are wrongful death and
7 personal injury, emotional distress by fleeing the fire trauma,
8 and emotion distress caused by loss of the home.

9 We have good settlement data from Butte and San Bruno on
10 that, we believe. And, Your Honor, it -- there we are using
11 the settlement data. It's not experts telling you from the
12 ground up, looking at a victim in this case, what were their
13 damages because, you know, they haven't been calculated yet.
14 They haven't been proven in a deposition.

15 **THE COURT:** Slow down without lowering with your
16 voice. Speak up and slow down.

17 **MR. JULIAN:** Yes. With respect to Butte and San
18 Bruno --

19 **THE COURT:** You have actual data.

20 **MR. JULIAN:** There, Your Honor, obviously the discount
21 is already built in because it's settlement data. We're not
22 building it from the ground up.

23 **THE COURT:** How are you going to do that? Is it going
24 to be --

25 **MR. JULIAN:** I don't know until I get the document.

1 **THE COURT:** You don't ask them.

2 **MR. JULIAN:** We have a portion of them, not all of
3 them.

4 **THE COURT:** Because we're thinking, among friends,
5 here, it can be -- data can be sliced and diced a million
6 different ways. So might be sliced by age group. You know,
7 you're going to have to put some fine tuning on it.

8 If you both agree, I'll work with it. If you reach
9 consensus, the odds are pretty good I'll probably just go with
10 that. But, if you don't, it's going to have to be not too
11 fine, but fine enough to make informed decisions.

12 Do you see what I'm saying?

13 **MR. JULIAN:** Yes.

14 **THE COURT:** Just one other question now. What
15 about -- you mentioned wrongful death and emotional distress.
16 But aren't there physical injuries well?

17 **MR. JULIAN:** Yes.

18 **THE COURT:** Burns?

19 **MR. JULIAN:** I put that into personal injury. It's
20 wrongful death and personal injury. Primarily the largest one
21 is emotional distress. There are some burn cases. In fact,
22 one of the witnesses you're going to hear from is a burn case.

23 **THE COURT:** All right. Go ahead.

24 **MR. JULIAN:** The third class of damages is punitive
25 damages. Perhaps, we disagree on the approach on this one. At

1 this time, we can't say whether we're going to do a separate
2 punitive damages claim or bake it into the settlement process.

3 **THE COURT:** I see.

4 **MR. JULIAN:** Our approach is to take a look at
5 punitive damages that have been awarded in the form of PUC
6 fines of \$1.6 billion for the San Bruno disaster and
7 record-keeping problems.

8 And there, the PUC set of fines was addressed sort of on a
9 per-violation number, but their press release looks at the PUC
10 fine in this way: The amount of damages suffered by the
11 victims times the multiple.

12 So, at least from the PUC standpoint, in assessing -- this
13 is all going to be disputed, obviously, our approach -- the
14 PUC, in the press release, looks upon it as a multiple of
15 victim damages. And they thought it was fair.

16 Similarly, in this case --

17 **THE COURT:** So you're saying the PUC set the fines as
18 a multiple of actual damages?

19 **MR. JULIAN:** Not in their decision. Only in their
20 press release.

21 In their decision, they went violation by violation by
22 violation.

23 In my view, this is my interpretation, their cross-check
24 on reasonableness was to look at the multiplier times the total
25 fines. And the fines there were varied. Some of the fines

1 were based on rebates; some of the fines were based on water
2 usage; some of the fines were based on an outright fine.

3 All I'm saying is: One data point that we'll submit to
4 you is the PUC set of fines and the analysis there. And,
5 overall, with respect to all these numbers we believe that it's
6 appropriate for Your Honor as opposed to an expert witness, to
7 determine whether a multiplier or each of these classes of
8 damages should be applied based on the difference between Butte
9 and San Bruno and Camp, where -- let's face it -- the people
10 fleeing the fire there, some of them -- I interviewed one, just
11 two weeks ago up at the FEMA camp, which was the basis for our
12 motion to extend the bar date recently.

13 This woman underwent four hours of sitting in the fire
14 thinking she was dying. You know, it was a much different type
15 of damage in San Bruno.

16 So our only point is, when we present the evidence with
17 these live testimony from victims, we will be asking probably
18 for a multiplier. And that's our view today.

19 It's very preliminary. Obviously, we have to work it out
20 with Mr. Orsini, and I don't think he agrees with anything I
21 said. So that's the approach.

22 **THE COURT:** Okay. I'm going to get back to the bar
23 date in a moment.

24 So, Mr. Orsini?

25 **MR. ORSINI:** Yes, your Honor.

1 For the reporter, Kevin Orsini for the debtors.

2 Let me work my way backwards through those three
3 categories, because I think there will be disagreements that,
4 obviously, we're not going to sort out today.

5 But, just to give Your Honor a little bit of sense as to
6 how we're thinking about this.

7 On the punitive damages, I think Your Honor remarked at
8 the last conference when we were here, there are no benchmarks
9 for this. I think you're right. There haven't been awards of
10 punitive damages in a case like this in California or,
11 candidly, anywhere else to our knowledge.

12 We don't believe the PUC fine has anything to do with
13 punitive damages. In fact, if anything, the existence of a
14 regulatory scheme that includes fines suggests that punitive
15 damages are not necessary. But, putting that argument aside,
16 the standard for imposing a regulatory fine is obviously
17 fundamentally different than the standard that's in place for
18 punitive damages.

19 These are issues Your Honor is going to have to sort
20 through because we have disagreements about whether or not it
21 is a relevant benchmark.

22 I think as it relates to punitives, as Your Honor said
23 last time we were here, we're going to have to present some
24 evidence to you. They have e-mails they want to show you.
25 We'll have some witnesses we want to present to you that are,

1 in particular, relevant on the punitive damages fees, so the
2 Court can understand what circumstances did lead, in
3 particular, to the Camp Fire; what sort of work was being done
4 by PG&E leading up to that; how did it match up with industry
5 standard, which it did; all relevant to that. So we'll have
6 some disputes and we will sort through that later.

7 On the non-economic damages -- the personal injury, the
8 pain and suffering, the wrongful death -- I think we are in
9 general alignment that one of the more interesting data sets
10 that will be presented to the Court on that issue is Butte
11 settlement values.

12 We obviously have a disagreement whether or not San Bruno
13 is a relevant benchmark. We'll present on that. Your Honor
14 will have to make a decision on that once you see the
15 differences between that case and this case, or not.

16 But, particularly with respect to Butte, what I heard
17 Mr. Julian say today and what I have heard him say during our
18 meet-and-confers is that they do think that the awards -- wrong
19 word, but the amount of money that was set aside in the
20 settlements for pain and suffering, personal injury in Butte
21 is, obviously, informative of the value of those claims here.

22 We agree with that. There will need to be some
23 adjustments. Those adjustments can be based upon likelihood of
24 liability in that case versus this one, because those will be
25 the damages that are available only for negligence, but also I

1 think in terms of, to Mr. Julian's point, the types of
2 experiences that were at issue. Right?

3 There are a whole lot of different types of experiences
4 that people suffered through in these tragedies. The same was
5 true with respect to Butte. There were some on one end of the
6 spectrum and some on the other. So what we would expect to do
7 is present to Your Honor, based on the settlement data, what
8 our experience was in Butte and how you value, in a settlement
9 context, these types of soft damages, non-economic damages
10 claims.

11 There may also be other information that could be useful
12 to the Court that we would present. There are whole industries
13 built around trying to value wrongful death claims -- for
14 example, for cases that have nothing to with wild fires -- in
15 the State of California. So there may be some comparables that
16 experts can bring to bear for Your Honor --

17 **THE COURT:** That's fine. You should do whatever you
18 want to do, but there is a lot of data here to work with.

19 **MR. ORSINI:** I agree. I think that would be the
20 primary mechanism. There just might be generally understood
21 trends as to what a personal death claim is worth for someone
22 in this age cohort, versus that age cohort, as the Court noted.
23 That was the point I was making there.

24 On economic losses, again, we certainly agree with
25 Mr. Julian that the starting point has to be an expert analysis

1 built up from the bottom on what were the actual homes that
2 were lost here; what were the values of those homes; what other
3 types of damages were incurred by those who lost their property
4 in these fires; what does it look like in terms of rebuilding;
5 what does it look like in terms of diminution of value.

6 Ultimately, I would expect we will present those rolled up
7 to Your Honor in one primary expert, as we have discussed at
8 prior conferences, so Your Honor is not parsing through
9 property by property.

10 But what will become clear quickly is that there are --
11 and don't hold me to the number -- but there is probably five
12 or six key variables that go into the spreadsheet on how you
13 calculate from the bottom up the actual damages.

14 We will know how many houses were lost. We will know how
15 many of those have claims associated with them. Then the
16 question becomes: How do you value different pieces of those
17 damages?

18 And I think we both have the same view that we'll build
19 that up for you. And then the question becomes: How do you
20 look at the settlements in the Butte case and what, if
21 anything, might that tell the Court as to how to deal with
22 that?

23 I do think you have to look at what was demanded, and what
24 was accepted. Very significant discounts in that case between
25 what was demanded and what was accepted, even in a scenario

1 where the Court, as Mr. Julian noted, had already held on
2 summary judgment that PG&E was liable on the inverse. So the
3 liability question was not at issue effectively on economic
4 damages when the settlements were reached, subject, of course,
5 to appeals.

6 **THE COURT:** Why were there such substantial discounts,
7 in your view?

8 **MR. ORSINI:** Well, I think there was some concern
9 about an appeal risk on the inverse, if it actually made it's
10 way up to the California Supreme Court and whether that applies
11 here.

12 But, I think it's also a question of overstatement of
13 actual damages. I think we have seen some of that already in
14 this case, and we will continue to see it. So it's not, in
15 itself, dispositive but, as Your Honor has noted, it will be a
16 relevant data point.

17 I do agree with Mr. Julian; I think we have had at least
18 two meet-and-confers on this issue. We exchanged
19 correspondence. I think more data will help both of us
20 identify areas of agreement and areas of disagreement.

21 **THE COURT:** All right. What happened to the bar date?
22 That's right now?

23 **MR. ORSINI:** It's today.

24 **MR. JULIAN:** The claims bar date is today. The TCC
25 filed, last Friday night, a motion to extend the bar date to

1 either December 5 or January 31.

2 If it's December 5, we recommended that if the Court did
3 not want to accept our evidence, the Court could appoint an
4 independent expert to go up to Paradise and Gridley, like I
5 did, and interview people to determine whether they are
6 impaired from filing, either through lack of knowledge, lack of
7 education, confusion, misrepresentation, or simply impairment
8 that I found from the trauma of living day-to-day in FEMA
9 trailer camps or tents.

10 **THE COURT:** Who is helping them file claims; is there
11 anyone up there?

12 **MR. JULIAN:** There is no fiduciary. So we asked --
13 the lawyers are attempting to get additional clients up there.

14 **THE COURT:** Do you all have teams up there going
15 around --

16 **MR. JULIAN:** We don't, but several firms do. But, in
17 my view -- in my investigation, I found that renters, who may
18 not have claims high enough for certain law firms, are most at
19 risk. We think there are anywhere from 15- to 20,000 renters
20 displaced, for which there is no forwarding address, or are
21 simply confused.

22 **THE COURT:** I'm not following this.

23 So someone here ought to be having the functional
24 equivalent of a claims center where people can show up and,
25 like our self-help desk here in court, people without lawyers

1 can walk in and get some guidance on how to do it.

2 You're telling me no one is doing that?

3 **MR. JULIAN:** The -- Prime Clerk is the agent that does
4 it for the debtor. We actually proposed it to the judge to
5 have something akin to that. He denied our motion.

6 So my motion last night, or Friday night, asked for the
7 appointment of a fiduciary to do precisely what you asked. A
8 fiduciary to go out and assist claimants who do not have a
9 lawyer to actually file the claim on the basis they lack the
10 skills to actually do it, which is what I found.

11 **THE COURT:** Why isn't PG&E doing that?

12 **MR. ORSINI:** Your Honor, there is an extensive notice
13 program put out. There are hotlines to call and assist with
14 questions about claims. There are customer centers available
15 for questions about claims.

16 **THE COURT:** What kind of customer centers?

17 **MR. ORSINI:** The PG&E customer centers.

18 **THE COURT:** Where are they?

19 **MR. ORSINI:** They are in the local community, sir.

20 **THE COURT:** They are advertised, "You can come here
21 for help with the claim"?

22 **MR. ORSINI:** I believe it was in the notice program
23 that went out. There is an extensive notice -- this is
24 actually the most extensive notice program that the bankruptcy
25 petitioners in this case have ever seen. It was something that

1 was discussed at length with Judge Montali in terms of getting
2 the appropriate amount of notice out there, satisfying due
3 process, making sure people understood what their rights were,
4 what they want.

5 There were millions of dollars spent on this --

6 **THE COURT:** Let me just chime in. Look, we all know
7 from class actions that, no matter how good the settlement and
8 notice are, the claims rates are abysmal. People just get
9 confused. They get overwhelmed. They are baffled. They throw
10 them away. They get something that says "in re," they have no
11 idea what it means.

12 So I am concerned that there aren't teams of people
13 scouring these areas to get these claims filed. Today is the
14 day. There is no guarantee the judge is going to lift the bar.

15 **MR. ORSINI:** Understood, Your Honor.

16 **THE COURT:** I have seen some evidence anecdotally in
17 newspapers saying that a tremendously high number of people who
18 are eligible aren't filing claims. And I don't understand why
19 PG&E isn't actively soliciting applications. It's something
20 you ought to be doing, not just with an e-mail and not just
21 with US mail.

22 **MR. ORSINI:** No, Your Honor, it hasn't just been with
23 an e-mail or US mail. There have been multiple rounds of
24 mailings. There have been social media campaigns. There have
25 been advertisements. The response rate that we are seeing is

1 well beyond what you would typically see in a class action
2 context.

3 **THE COURT:** What's the response rate?

4 **MR. ORSINI:** We're still processing the date. It
5 looks like, so far, the response rate could be in the
6 neighborhood of 40 to 50 percent of actual parcels that were
7 destroyed have a claim associated with them. The other
8 piece --

9 **THE COURT:** That's better than the typical class, but
10 that still means 50 to 60 percent of victims aren't going to
11 get a dime. That's just not right.

12 **MR. ORSINI:** I wouldn't say that that means 50 to
13 60 percent aren't going to get a dime. Part of what's going on
14 is there has also been \$16 billion of insurance paid out. So I
15 think there are a lot of people who may very well be deciding
16 that their insurance was sufficient to cover their losses. And
17 there are certainly, if there are situations involving specific
18 hardship, there are provisions for that in the bankruptcy code.

19 The other thing I would note --

20 **THE COURT:** Let's just pause on that. It concerns me.

21 Let's say someone doesn't get their claim in today because
22 they are suffering from some disability; they just couldn't do
23 it; they are overwhelmed; they don't understand.

24 How do they apply to get out of that and get their claim
25 heard?

1 **MR. ORSINI:** They can bring that claim to the
2 bankruptcy court. That's something bankruptcy court deals with
3 all the time.

4 **THE COURT:** How are they going to know to do that?

5 **MR. ORSINI:** They can bring it to us. They can bring
6 it to Prime Clerk.

7 There is actually -- Mr. Julian said the fiduciary. There
8 is a fiduciary to the wild fire claimants. It's Mr. Julian and
9 his law firm, who has been working on this case for six months.
10 And they also have the obligation to be out there helping bring
11 these claims in. So I think the statement that there is not a
12 fiduciary is misleading.

13 And the other point that I would make on that front, Your
14 Honor, is that there has been a tremendous amount -- tremendous
15 amount -- of advertising by the tort lawyers, the state court
16 lawyers, in these areas, walking in the FEMA camps, going out
17 there, that is on top of all the work that has already been
18 done with respect to the noticing program.

19 And these are the types of issues that Judge Montali is
20 going to have to face with respect to that motion.

21 But, we believe, based on what we have seen, that the
22 notice program far exceeds anything that's ever been required
23 before. And that was Judge Montali's determination when he
24 approved --

25 **THE COURT:** Is that your view, Mr. Julian?

1 **MR. JULIAN:** Pardon me?

2 **THE COURT:** Is that your view as well?

3 **MR. JULIAN:** No.

4 What I would like to, do since you have asked questions,
5 is deliver to chambers a copy of our motion with the 10 or so
6 declarations filed about victims who were educated, but tell
7 the story of their impairment and lack of notice.

8 **THE COURT:** Give me one example, just a short example.

9 **MR. JULIAN:** I'll give you the one I did, because
10 that's -- my investigator filed the declaration himself.

11 So I -- when the victim's lawyers informed Judge Montali
12 that there was a problem with participation, it was a day in
13 the hearing where Bruce Bennett, the lawyer for the equity
14 shareholders, which we contend are controlling the debtor now,
15 stood up and said, "The day of reckoning is coming because the
16 claims aren't there."

17 Mr. Skikos, one of the lawyers who has appeared in this
18 Court, stated to the judge he was going to file a motion to
19 extend the bar date. And he had 10 or 12 declarations. He
20 brought them to us. I looked at them. For the first time I
21 recognized there was an impairment problem.

22 So I took an investigator up with me to Gridley, which is
23 the FEMA trailer, camp about 30 minutes from Paradise, and
24 interviewed five victims randomly, knocking on the doors. And
25 two said they filed claims. Three said they had not. And one

1 was so overwhelmed with problems with her cat, couldn't get
2 around to it.

3 The woman I spent about 30 minutes with was, I think, 89
4 years old. She told a harrowing story about being thrown into
5 a car from the Feather River Hospital on the day of the fire,
6 with the flames all around, and looking through the flames and
7 thinking she was going to die, for four hours.

8 And now, every time she gets up in the morning, she -- if
9 she hears a fire engine or sees a candle, she is in trauma and
10 shakes. She told me she thought she could only file if she was
11 insured, and she did not own the home; she was a renter.

12 The next woman I went to, essentially, told me the same
13 story. The first woman I interviewed on the phone, she was
14 right next to the trailer, said it was just too much getting
15 out of bed and dealing with everything to do it.

16 And what I learned from that was, I corroborated the 10
17 declarations that had been given to us by Mr. Skikos, the
18 declarations there, essentially, established the same story,
19 that a lot of these people many of whom were renters -- I won't
20 say all of them, but appears to be a lot of them -- simply
21 don't have forwarding addresses. There is no way that PG&E
22 could have sent them direct notice.

23 And they are so impaired from getting up in the morning
24 and living with this, not having any of their belongings that
25 they used to have in Paradise, that -- they explained that they

1 don't know what to do.

2 And most of them don't have the education that they can
3 file a claim. And by "education" I don't mean grade-wise. I
4 mean, they don't have the knowledge in this case. And so
5 that's why I asked in my motion that I filed Friday, there be a
6 fiduciary appointed to go out and do what I did, and find the
7 people, educate them, and set up a table in Paradise and the
8 like.

9 **THE COURT:** How many fire victims are in Gridley right
10 now, the FEMA camp?

11 **MR. JULIAN:** Actually, at that camp there are 350
12 trailers. One or two or three people per trailer. The ones I
13 saw were one in four trailers in each of the four and two in
14 one of the trailers.

15 **THE COURT:** And are there other FEMA camps?

16 **MR. JULIAN:** I think -- Kevin, I think there are two
17 others?

18 **MR. ORSINI:** I think that's right.

19 **MR. JULIAN:** Yeah, but a lot of these people are
20 living --

21 **THE COURT:** Maybe PG&E should have gone to each of the
22 trailers and knocked on the door said, "How do we help you fill
23 out your form?"

24 Did PG&E do that?

25 **MR. ORSINI:** We did not, Your Honor, including because

1 we have -- had we have had extensive allegations from the
2 plaintiffs' lawyers that are representing the fire victims
3 about improper contact to potential victims. Even in scenarios
4 where PG&E was talking to people who lived in Paradise to try
5 and get an understanding as to whether or not they intended to
6 rebuild their house so that PG&E could decide whether or not
7 they were going to actually run service back to the location,
8 we were accused of all sorts of ethical violations for
9 communicating with people that were potentially represented.

10 **THE COURT:** Is that right, Mr. Julian?

11 **MR. JULIAN:** I did not make that -- two points. First
12 of all, I did not make that -- one of lawyers did -- presented
13 to me e-mails and phone calls whereby the PG&E person asked the
14 question, "Are you going to rebuild?"

15 And the "Are you going to rebuild" question, the
16 plaintiffs' lawyer say, is a trap, because if the person says
17 yes, he gets his costs to rebuild. If he says no, he gets
18 diminution of value, which is why some of these claim numbers
19 come down.

20 Secondly, what I'm referring to has no ethical problem.
21 Renters. Renters aren't not going to rebuild. They didn't own
22 anything, Your Honor.

23 What I'm saying is I found a bunch of renters --

24 **THE COURT:** All these folks are going to get the short
25 end of the stick because the litigation gamesmanship is really

1 unacceptable.

2 Now, I am -- strictly speaking, this matter is before the
3 bankruptcy judge, so I'm going to let that court handle it.

4 But it obviously affects the estimation if less than
5 40 percent of the people who are entitled to claims file and
6 60 percent don't. That's going to affect the estimation. So
7 that's why I'm asking.

8 Now, I will just tell you, I find that, were I doing it
9 from scratch -- and I'm not -- things would have been done
10 differently. That strikes me as a lot of posturing that's
11 being balanced on the backs of people who have suffered
12 tremendous tragedies. Both sides, plaintiffs and defendants.

13 I cannot imagine a lawyer ever telling someone "Don't go
14 and fill out a claim form. It's a trap."

15 I also cannot imagine PG&E not going to each and every
16 victim saying, "Here is the claim form. Make sure you get this
17 done, because if you don't, the bar is going to drop," which is
18 going to happen today, unless the judge extends it in
19 three hours or less.

20 **MR. JULIAN:** Let me clarify: I don't know any
21 plaintiffs' lawyers who said, "Don't fill out a claim form."

22 **THE COURT:** Someone on the plaintiffs' side said,
23 "Don't talk to the lawyers because it's a trap."

24 You just told me that.

25 **MR. JULIAN:** I understood that a plaintiffs' lawyer

1 said to his client, "Don't answer the question if a PG&E
2 representative asks, 'Are you rebuilding or not?'"

3 All the plaintiffs' lawyers have told everyone they know
4 to file claims.

5 Your Honor, there are two other ways you are involved in
6 the motion before the Court on the bar date.

7 **THE COURT:** Well, let me just get back to what -- so
8 when are you expecting to hear from Judge Montali?

9 **MR. JULIAN:** On the motion to extend the bar date?

10 **THE COURT:** Yes.

11 **MR. JULIAN:** The hearing is November 13th. And we put
12 in our brief that there are two ways Judge Donato would be
13 involved.

14 First of all, he has asked how we are addressing future
15 claims. And a future claim in an asbestos case is where the
16 exposure to asbestos occurred before the bankruptcy case, but
17 injury could occur after confirmation later. That's a future
18 claim.

19 In this case, we don't believe we have exposure to the
20 fire with an injury later. What we have is exposure to the
21 fire and an impairment to file that tolls the statute or tolls
22 a bar date. That's a type of future claim. Whether that is a
23 type of future claim that should be estimated in this case, I
24 don't know yet.

25 And what I have said to Mr. Orsini is that we would like

1 to see how Judge Montali handles the extension of the bar
2 date --

3 **THE COURT:** We have plenty of time. So I will know
4 with a high degree of certainty at that point.

5 All I'm saying, is it would be a heartbreaking shame if
6 even 10 percent of the eligible victims don't file claims for
7 whatever reason. If we're talking about 50 percent not filing,
8 that's -- that's intolerable.

9 **MR. JULIAN:** That's what we're looking at. That's why
10 we filed the motion. And that's why we're asking for a
11 fiduciary to be appointed.

12 **THE COURT:** Okay.

13 **MR. JULIAN:** Your Honor, there is one more aspect you
14 may be involved with Judge Montali's motion.

15 **THE COURT:** Yes.

16 **MR. JULIAN:** And that is: Judge Montali may ask
17 whether or not, if he extends the bar date and new claims come
18 in between now and December 5, the first trigger -- or
19 January 31, the potential second trigger -- whether this Court
20 can estimate claims that are brought in after October 21.

21 And we have simply briefed to him that that is a question
22 that should be directed to you.

23 From the TCC's standpoint, we believe we can come up with
24 a process to bring those claims into estimation. And he may
25 want to know your view, or may want to know PG&E's view. All

1 we know now from the correspondence this weekend, PG&E will
2 oppose our motion for the short extension to December 5, as
3 well as the longer extension to January 31.

4 **THE COURT:** Well, if we have a working database of
5 50 percent, which I hope is much higher, it's an easy matter to
6 extrapolate larger groups of people. I'm not terribly worried
7 about that.

8 **MR. JULIAN:** Thank you, Your Honor.

9 **THE COURT:** Okay. What else for today?
10 San Bruno documents get produced?

11 **MR. ORSINI:** Yes, Your Honor. We have produced or
12 will have produced by the end of today all of the demand and
13 settlement packets, in the sense of the initial demand, the
14 counter, the settlement agreement.

15 There are additional documents related San Bruno, sort of
16 the broader set that we had talked, about that are still in
17 process.

18 I think Ms. Morris has points on that. But, we're in the
19 process.

20 **MS. MORRIS:** Good afternoon, Your Honor, Kimberly
21 Morris, Baker Hostetler, for the Official Committee of Tort
22 Claimants.

23 Mr. Orsini has said that with respect to San Bruno we
24 should have all of agreements and demands by the end of the day
25 today, but there is still the outstanding issue of the Butte

1 settlement agreement and demands. And right now we have less
2 than 50 percent of the agreements and none of the demands.

3 And I believe, in my discussions with Mr. Orsini, that the
4 hold up is the redactions that they're doing to protect
5 themselves against violation of a mediation confidentiality
6 privilege.

7 What I would request from you, Your Honor -- which I think
8 may help resolve this -- is an order directing that they
9 produce those documents without the redactions without
10 violating the mediation confidentiality, so we can get those
11 documents in a lot quicker and start utilizing them to come
12 back to with what we intend to do with them during the
13 estimation trial.

14 **THE COURT:** Whatever happened -- I think it was
15 Mr. Singleton who offered to provide a big tranche of Butte
16 documents?

17 **MS. MORRIS:** He did. And I have spoken with
18 Mr. Singleton about getting his spreadsheets of his data. But
19 again, he only has a portion of those and --

20 **THE COURT:** Is that right, roughly 700?

21 **MR. SINGLETON:** Yeah, 697.

22 **THE COURT:** Okay.

23 **MS. MORRIS:** We would like to be on equal footing with
24 the debtors and have everything they have so we have a full
25 picture of the types of claims and the types of settlements.

1 And I think if Your Honor would order them to produce that
2 information without redactions, that could assist the process.

3 **MR. ORSINI:** I think, by the end of today, we will
4 have produced all of the Butte settlement agreements in
5 redacted form. We will have produced roughly, I believe, half
6 of the demand packets in redacted form. There is still a
7 tremendous amount of redaction to do.

8 Candidly, I think it's in the best interests of that group
9 if we don't have to do those redactions.

10 **THE COURT:** Just make it outside counsel's eyes only,
11 or whatever you would like to do.

12 **MR. ORSINI:** If that's Your Honor's directive, we will
13 absolutely abide by that.

14 **THE COURT:** Have you all done a protective order yet?

15 **MS. MORRIS:** We do have a protective order, but I
16 don't think it covers the state court confidentiality mediation
17 privileges of which Mr. Orsini is concerned. And also --

18 **THE COURT:** It should be fine.

19 You can just designate it outside counsel only and --

20 **MR. ORSINI:** So our concern was just making sure we
21 didn't violate some state law confidentiality. I think -- the
22 Court has just directed us to produce it subject to protective
23 order --

24 **THE COURT:** Blame the Court.

25 **MR. ORSINI:** That gives us the comfort that we will

1 proceed as we need to.

2 MS. MORRIS: One clarification.

3 THE COURT: Did you all do an order?

4 MS. MORRIS: We do have a protective order.

5 THE COURT: Did I enter it?

6 MR. ORSINI: No, Judge Montali.

7 THE COURT: Okay. Fine. Use that then as a screen.
8 Confidentiality is usually, "Attorneys' Eyes Only."

9 MS. MORRIS: Could we do "Professional Eyes Only," so
10 we can utilize our experts?

11 THE COURT: Yes.

12 So that resolves that. You'll get them all today.

13 MR. ORSINI: Maybe not today. We need to put Bates
14 numbers on them. But you will get them quickly.

15 MR. JULIAN: Two housekeeping matters, Your Honor.

16 THE COURT: Yes, please.

17 MR. JULIAN: First, you asked us if the inverse
18 briefing could be moved up. We are submitting our letters
19 tomorrow to Judge Montali on that. It may be possible to move
20 it two weeks up. Mr. Orsini and I are still talking about
21 that. We'll submit the letter to Judge Montali on that
22 tomorrow.

23 THE COURT: When would that be, if it moved up?

24 MR. JULIAN: Well, our proposal is that the matter be
25 deemed submitted on November 15, if there is no reply brief.

1 If there is a reply brief, on November 22, that it will be
2 deemed submitted on November 22, and that there be no hearing
3 on December 11, because we think it's a rather straightforward
4 legal issue.

5 **THE COURT:** Okay.

6 **MR. ORSINI:** From our perspective, Your Honor, we had
7 proposed to have the whole inverse issue decided months ago.
8 TCC opposed that, which is what led us to having the December
9 date.

10 We're willing to speak to Judge Montali on Wednesday --
11 we're before him on other matters -- about whether he can move
12 the hearing up. We're not willing to forego the hearing at
13 this point.

14 **THE COURT:** And I am certain you appreciate he has
15 quite a bit to do, as do you. And if anything can be made to
16 do it earlier, it will make your trial prep a lot easier.

17 **MR. ORSINI:** Understood.

18 **THE COURT:** And the second matter?

19 **MR. JULIAN:** The second matter is the District Court's
20 order withdrawing the reference stating that the case was -- or
21 the estimation was assigned to you provisionally, and that the
22 withdrawal would become permanent, when you ordered it
23 permanent. I think, by implication, you have, but I wanted to
24 draw that to your attention.

25 **THE COURT:** Okay. Consider it permanently withdrawn.

1 **MR. JULIAN:** Thank you, Your Honor.

2 **THE COURT:** Anything else?

3 **MR. ORSINI:** From your perspective, Your Honor, there
4 is the question of the damages questionnaire. We have
5 discussed this before. So let me just give you an update as to
6 where we are.

7 We had provided them our extent of damages questionnaire
8 in advance of the hearing on October 6th or 7th, whatever date
9 that was.

10 We have -- we last week gave them a shorter one, trying to
11 reduce the burden. I believe we cut it in, at least, half. We
12 have not yet heard back. I believe Mr. Julian has said they
13 would be prepared to meet and confer on that later this week,
14 which is fine, and we'll have that meet and confer.

15 I do think it's important, however, we get that out so
16 that we have enough time for people to actually respond to it,
17 so that we have enough time to process the data.

18 I'm a little concerned that --

19 **THE COURT:** How are you going to distribute that?

20 **MR. ORSINI:** I would expect that a significant amount
21 of it can be distributed through the counsel for the actual
22 victims. Because many, many of the victims in these cases are
23 represented by lawyers. Not the TCC, but folks like
24 Mr. Singleton. There may be some mailing or e-mail involved as
25 well, so we get a representative sample of cross-section here.

1 But it's going to be a process --

2 **THE COURT:** It probably should go through counsel.
3 Because this is a tool that's being used for litigation, and a
4 little bit different from -- significantly different, in my
5 mind, from the claims form.

6 **MR. ORSINI:** I agree with that. My only point was, if
7 there are thousands of victims not represented by counsel, we
8 may not want to exclude them from --

9 **THE COURT:** There are thousands?

10 **MR. ORSINI:** I say "if." We are still processing the
11 data. There very well may be. What we have seen so far, that
12 could be where we end up.

13 But these are obviously the questions we have to tackle:
14 Who do we send it to and how? I don't know if we're going to
15 have disputes as to what.

16 And, just given the timing, I'm concerned about waiting
17 another two weeks to get those things ironed out. So, subject
18 to Your Honor's preference and availability, I would ask we set
19 aside some time next week.

20 **THE COURT:** I'm starting to think a little bit out
21 loud.

22 How are we going to get people to fill those things out?

23 **MR. ORSINI:** Well, I think the Court has to set a
24 deadline.

25 I think, in particular, where they are going out through

1 lawyers who have duties to this Court, there will be the
2 ability for the Court to enforce that order and to enforce the
3 assurance that they are filled out completely and accurately.

4 There have been, in other bankruptcies, orders that have
5 been entered that include sanctions for failure to fill out. I
6 don't expect we're going to ask for that. That, obviously,
7 increases the likelihood that we get them. But, as I said, I
8 don't think we're going to ask for that. But I think it's
9 going to be a matter of the Court entering a very clear
10 deadline and holding the lawyers who represent --

11 **THE COURT:** You're expecting plaintiffs' counsel to be
12 the driver on the questionnaires?

13 **MR. ORSINI:** I'm expecting the plaintiffs' counsel to
14 work with their clients and actually get them filled out and
15 get us back what we need to estimate the claims they are
16 asserting, yes.

17 **THE COURT:** What do you think about that?

18 **MR. JULIAN:** We think that's a good approach, if we do
19 it. Again, this is usually a 12 to 16-month process when there
20 is one injury. Here we have 22 fires, 22 different types of
21 injuries within each fire.

22 So we know they can be helpful, and so we are meeting with
23 the plaintiffs' lawyers and economist later this week to see if
24 we can pare it down. Because, obviously, if it's one page,
25 something could be done in two months, which is what they want.

1 Actually, they want it in done in a month so the experts
2 can have it in a month. Your Honor, one month to fill it out
3 and one month for expert review is unheard of in these cases.

4 We're going to work with Mr. Orsini, we're going to work
5 with the plaintiffs' lawyers to try to pare that down to
6 something that's reasonable, and talk about the process to get
7 it out.

8 **THE COURT:** Well, we're obviously not dealing with the
9 strictest standard of proof. This is an estimation. We have
10 talked about that many times. Nevertheless, I need to feel
11 comfortable that I have a representative set of survey
12 responses. So it has to be more than, you know, 100 folks.
13 It's going to have to be a critical mass that gives me the
14 assurance that they, more or less -- more or less, not exactly,
15 but more or less -- represent the world as it is. Okay? So
16 that's going to be the task.

17 **MR. ORSINI:** We agree with that, Your Honor.

18 **THE COURT:** That's going to be a lot of work to do.

19 Now, Mr. Orsini, would like to finish the questionnaire.
20 When can you get that done?

21 **MR. JULIAN:** We think we can get back to him this
22 Friday.

23 **THE COURT:** By Friday?

24 **MR. JULIAN:** Yeah.

25 **THE COURT:** Okay. Is that good?

1 **MR. ORSINI:** That's good, Your Honor.

2 I would ask, if Your Honor is available, whether we can
3 set some time aside next week to come in if we have disputes,
4 just because I think, if we wait another two weeks, and then
5 Your Honor is going to have to parse through them. Then we're
6 going to have to go through the process of getting them out.
7 Time does matter here.

8 **THE COURT:** Well, why don't we tentatively plan for
9 2:00 on Monday. Okay? Is that enough time? Do you want to do
10 it Tuesday?

11 **MR. JULIAN:** I'm not here, but we have partners who
12 can appear for us.

13 **THE COURT:** We have a lot of people in the courtroom.

14 **MR. JULIAN:** Yes, we do.

15 **THE COURT:** Okay. Let's do it at 1:00 on Monday. I
16 have a pretrial conference at 2. If you don't need it, just
17 drop me a line. All right? Just tell me we don't need to come
18 in. Otherwise, I will see you here for the questionnaire.
19 Okay.

20 **MR. ORSINI:** Thank you, Your Honor.

21 **THE COURT:** Now, it seems to me, this is productive.
22 This is an experiment. I do this in my MDLs and other cases,
23 as I mentioned. And I'll do this until you all agree you don't
24 want to do it anymore. We can keep on two weeks, next week
25 being the interim exception.

1 Anything else? Any discovery issues?

2 MR. JULIAN: May I file a copy of our motion to extend
3 the bar date with the Court so you may see it?

4 THE COURT: Sure. Yes.

5 Yes?

6 MR. SINGLETON: Thank you, Your Honor. Gerald
7 Singleton.

8 Very brief issue I want to raise with the Court and ask
9 for the Court's guidance.

10 We're having an issue with Prime Clerk.

11 THE COURT: What?

12 MR. SINGLETON: We're having an issue with
13 Prime Clerk, which is the mechanism through which we file the
14 proofs of claim. And because it relates to numbers of
15 estimation, I wanted to ask the Court if the Court want us to
16 address it with Your Honor or take it to Judge Montali.

17 In a nutshell, here is the issue: When you file a proof
18 of claim on behalf of a claimant, there are problems with
19 either withdrawing it, in the event someone changes their minds
20 and wants it withdrawn, or, two -- and this is, by far, more
21 common -- things are filed duplicatively.

22 And there are a lot of reasons for that. It has to do
23 with the system through which this data is processed and --
24 but, in our assessment, over the weekend, when we were filing
25 and looking at it, we found a number of duplicative claims. A

1 significant number.

2 THE COURT: More than one claim for one person?

3 MR. SINGLETON: Yes, sir.

4 THE COURT: They accidentally hit the file button --

5 MR. SINGLETON: Not so much hitting "file" but
6 sometimes things are submitted as a part of the subrogation
7 insurance data and sometimes individually --

8 THE COURT: I see.

9 MR. SINGLETON: So the concern we have is, we asked
10 Prime Clerk about consolidating these so there was only one,
11 and we were not able to get a responsive answer.

12 THE COURT: So sounds like a bankruptcy thing. I have
13 no idea what Prime Clerk is, but this is a third-party vendor?

14 MR. SINGLETON: It is. I just want to know if Your
15 Honor wants to --

16 THE COURT: Why do they refuse to fix it?

17 MR. SINGLETON: My understanding is they have a system
18 in place and they are not generally used to filings of this
19 size. So I think this might be an unusual circumstance for
20 them.

21 Plus, they are getting inundated. There have been tens of
22 thousands filed within the last two weeks. So I completely
23 understand Prime Clerk's issue.

24 We're just concerned because what we don't want is to have
25 duplicative claims presenting the parties and the Court with an

1 inaccurate report of the total number of claimants.

2 **THE COURT:** You all just can't de-dupe? In class
3 actions, the class administrators do this all the time. It's
4 all automated. I'm sure you both know, probably.

5 So they can't do the same thing?

6 **MR. SINGLETON:** We have been told no. And that's
7 something that we're trying to work out. But I wanted to raise
8 this issue with the Court. And we can raise it with
9 Judge Montali if it continues.

10 I just wanted to know: Does the Court want us to bring
11 this to Your Honor, or something we should address with
12 Judge Montali.

13 **THE COURT:** Sounds to me, in the first instance, it's
14 going to be the bankruptcy court. But if anything changes it's
15 something else -- I hear what you're saying and we're going to
16 have to -- if it turns out that it's raising the claims rate by
17 a significant margin, we'll have to address it. If it's
18 plus-or-minus 3 or 5 percent, I'm not going to get terribly
19 hung up on it. If it's plus-or-minus 30 percent, we're going
20 to have to take a look at it.

21 **MR. ORSINI:** I think -- Kevin Orsini for the debtor.

22 I think it's more complicated because we plainly agree
23 with Mr. Singleton. None of us want duplicative claims. There
24 is a lot of manual work that has to be done to aggregate claims
25 that are not duplicative. So if I was living in a home with my

1 wife, we lost the home, both fled the fire, sometimes that
2 comes in as one claim associated with the address, sometimes it
3 comes in as two. That contributes to something that looks like
4 duplication, and may not be.

5 I'm going to get so far over my skis here I will
6 immediately fall if I start talking about what Prime Clerk can
7 and can't do. But we are attuned to the fact there is noise in
8 the data in terms of duplicates and those --

9 **THE COURT:** One thought -- and it's going to be
10 expensive and I don't necessarily recommend it -- but one
11 thought, and I'm sure you have had it too. If you just got --
12 it's probably a SQL database. If you got that and gave it to
13 someone who knows how to do it, you can get it automated. It's
14 not an insurmountable problem.

15 Maybe there is something about Prime Clerk I'm not
16 appreciating. But this happens all the time in, admittedly,
17 less complicated domains, but happens all the time in class
18 cases. And you can do it electronically.

19 You may have to do something to get the database all set.

20 **MR. ORSINI:** There has been the lot of work done over
21 the last few days. You have heard Mr. Skikos' name mentioned.
22 He is one of the plaintiffs' lawyers who has been managing a
23 database they created that was being ported over to
24 Prime Clerk. And there have been multiple, you know,
25 multi-daily conversations about how to make that work, so --

1 **THE COURT:** What I would do, and it's totally up to
2 you, but I would get some sense of magnitude. As I said,
3 frankly, just you pick an arbitrary number. If it's less than
4 10 percent, I'm not going to be bothered by it. If it looks
5 like it's larger and skewing things one way or the other, we're
6 going to have to deal with it. It may be simple as you just
7 give me a number and say, "We have 100,000 claims. We believe
8 20 percent of those are probably duplicative and so we'll work
9 with a set of 80."

10 **MR. ORSINI:** I think we'll be able to do better than
11 that for Your Honor, but understood.

12 **THE COURT:** Is that good?

13 **MR. SINGLETON:** Thank you, Your Honor.

14 **THE COURT:** Anything else on behalf of anyone?

15 **MR. JULIAN:** No, Your Honor.

16 **THE COURT:** I'll see you Monday at 1:00.

17 (Proceedings adjourned at 2:47 p.m.)

18 ---o0o---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, October 22nd, 2019



Ruth Levine Ekhaus, RDR, FCRR, CSR No. 12219
Official Reporter, U.S. District Court